A

SABU DEVELOPMENT SDN BHD

v.

KELIK BAYEL

B

HIGH COURT SABAH & SARAWAK, KUCHING
HAMID SULTAN ABU BACKER JC
[ORIGINATING SUMMONS NO: 24-293-2006-II]
25 APRIL 2007

C ***ADMINISTRATIVE LAW**: Declaration - Declaratory relief - Consumer claims tribunal - Jurisdiction - Necessary parties not named - Whether plaintiff satisfied legal and procedural requirements - Whether plaintiff's application frivolous and an abuse of the process of the court - Rules of the High Court 1980, O. 15 r. 16 - Specific Relief Act 1950,*
D *s. 41*

This was the plaintiff's originating summons seeking, *inter alia,* a declaration that the Statutory Tribunal for Consumer Claims ('TCC') created under s. 85 of the Consumer Protection Act
E 1999 (Act) would be acting *ultra vires* the Act should the Tribunal hear cases where the subject matter involved contractual disputes arising from the purchase of 'real property.' The defendant in this case was not the 'Statutory Tribunal for Consumer Claim ('TCC') or its representative who the law authorized to sue or be sued.
F The defendant was the 'consumer' itself who sought protection under the Act. The plaintiff in an unusual manner was seeking a declaration involving the State without naming the Government of Malaysia or serving the papers on the Attorney General when the subject matter of the suit involved jurisdiction of the TCC under
G the Act.The plaintiff herein was the developer and the defendant was a purchaser of a single storey terrace house. The defendant had filed a claim with TCC against the plaintiff for contractual dispute involving the purchase of the property and claiming for damages for late delivery and defective workmanship. The plaintiff
H *inter alia* submitted that the TCC lacked jurisdiction or was not vested with the jurisdiction to hear cases where the subject matter involved 'contractual disputes' arising from the purchase of 'real property' for the reason that a 'house' did not fall within the ambit of the definition of 'goods' and the defendant's claim was
I for liquidated damages and defective workmanship.

Held (dismissing plaintiff's originating summons with costs):

(1) The necessary and interested parties were not named herein. The TCC must be made a party and/or be represented in these proceedings. Any decision given without the hearing of the tribunal would be in breach of the rules of natural justice. The plaintiff had not made out a case to proceed without naming the TCC. Further, declaratory relief is discretionary relief and not one which could be sought as of right. *Sine qua non* for considering the declaratory relief needed the presence of all interested and necessary parties as set out in O. 15 r. 16 Rules of the High Court 1980 as the court deemed fit. (para 5)

(2) The plaintiff's reliance on the views of learned author P.W. Young in his book on 'declaratory order' was not sufficient to satisfy the threshold requirement before the court could exercise to grant declaratory relief. The very important principle which must be adhered to before declaratory relief could be considered was for the plaintiff to ensure that all necessary and interested parties were before the court and only thereafter could the views of P.W. Young become relevant. The plaintiff must also satisfy the requirement set out in the Specific Relief Act 1950 (SRA 1950) because the Act specially dealt with declaratory orders and decrees. In the light of s. 41 of the SRA 1950 of the Act, the proposition stated by PW Young could not be read in isolation. Further, it would appear that the literal reading of O. 15 r. 16 of Rules of the High Court 1980 would be *ultra vires* s. 41 of the SRA 1950. (para 6)

(3) Notwithstanding there were some merits in the plaintiff's submission, the plaintiff had not satisfied the legal and procedural requirements and had taken much of court's time and on the facts of this case the plaintiff's application was frivolous, vexatious and an abuse of process of court. (para 8)

Case(s) referred to:

Akberdin Hj Abdul Kader & Anor v. Majlis Peguam Malaysia [2002] 4 CLJ 689 CA ***(refd)***

Kathamar Nachiyar v. Dorasingha [1875] 21A 169 ***(refd)***

Kesultanan Pahang v. Sathask Realty Sdn Bhd [1998] 2 CLJ 559 FC ***(refd)***

Kho Poh Teck v. Digi Telecommunications Sdn Bhd [2006] 2 CLJ 957 HC ***(refd)***

A *Palmerston Holdings Sdn Bhd v. Chong Siew Eng [2007] 7 CLJ 56 HC* ***(refd)***
Phileoallied Bank (Malaysia) Bhd v. Sakuntalathevy Manickavasagam [2007] 1 CLJ 72 HC ***(refd)***
Re Khoo Kim Hock [1974] 2 MLJ 29 ***(refd)***
B *SEA Housing Corporation Sdn Bhd v. Lee Poh Choo [1982] CLJ 355; [1982] CLJ (Rep) 305 FC* ***(refd)***
Tan Tian Seng & Anor v. Grobina Resorts Sdn Bhd [2005] 7 CLJ 70 HC ***(refd)***
Telekom Malaysia Bhd v. Tribunal Tuntutan Pengguna & Anor [2007] 1 CLJ 300 HC ***(refd)***
C *Tribunal Tuntutan Pembeli Rumah v. Westcourt Corporation Sdn Bhd & Other Appeals [2004] 2 CLJ 617 CA* ***(refd)***
United Overseas Bank Limited v. Ting Kai Hoon [1998] 1 LNS 38 ***(refd)***

Legislation referred to:
Consumer Protection Act 1999, ss. 2(2)(g), 3, 85, 99, 113
D Housing Developers (Control and Licensing) (Amendment) Act 1966, s. 16B
Interpretation Acts 1948 and 1967, s. 17A
Rules of the High Court 1980, O. 15 r. 16
Specific Relief Act 1950, s. 41

E *For the plaintiff - Victor Ng; M/s Tang & Partners*

Reported by Suhainah Wahiduddin

F

JUDGMENT

Hamid Sultan Abu Backer JC:

[1] This is my judgment in respect of the plaintiff's originating
G summons seeking, *inter alia*, a declaration that the Statutory Tribunal for Consumer Claims ("TCC") created under s. 85 of the Consumer Protection Act 1999 (Act) would be acting *ultra vires* the Act should the Tribunal hear cases where the subject matter involves contractual disputes arising from the purchase of "real
H property".

[2] The defendant in this case is not the "Statutory Tribunal for Consumer Claim" (TCC) or its representative who the law authorises to sue or be sued. The defendant is the "consumer"
I itself who seeks protection under the Act. The defendant was not present or represented in this case. The plaintiff in an unusual manner is seeking a declaration involving the State without naming

the Government of Malaysia or serving the papers on the Attorney General when the subject matter of the suit involves jurisdiction of the TCC under the Act.

[3] The plaintiff in this case is the developer and the defendant is a purchaser of a single storey terrace house. The defendant had filed a claim with TCC against the plaintiff for contractual dispute involving the purchase of the property and claiming for damages for late delivery and defective workmanship.

[4] The plaintiff, *inter alia*, submits as follows:

(a) the TCC lacks jurisdiction or is not vested with the jurisdiction to hear cases where the subject matter involves "contractual disputes" arising from the purchase of "real property" for the reason that a "house" does not fall within the ambit of the definition of "goods" and the defendant's claim is for liquidated damages and defective workmanship.

(b) the plaintiff had raised the issue with the TCC whether TCC is vested with the jurisdiction to hear the defendant's claim and had requested TCC to exercise their discretion to cause a reference to be made to the High Court of Sabah and Sarawak on a question of law under s. 113 of the Act. The TCC had orally informed the plaintiff that they are refusing to exercise their discretion under s. 113 of the Act. The plaintiff has no other alternative remedy but to seek for a declaration to clarify the status of the law on the question of law raised in this application.

(c) the TCC had informed the parties that they can submit on the question of jurisdiction at the hearing of the claims and the TCC would make the necessary order thereafter. The plaintiff's managing director had been orally informed by TCC that they have decided at their own volition to postpone all cases against the plaintiff indefinitely until such time when the High Court delivers its ruling on the issue of jurisdiction. No order or ruling was made by the TCC at the time as to whether they have the jurisdiction to hear cases where the subject matter is that of "real property".

(d) an action for a declaration may be begun by writ or an originating summons. Proceedings in which the sole or principal question at issue is one of construction of any written law are appropriate to be taken by originating summons. Furthermore,

s. 41 of the Specific Relief Act 1950 prohibits the grant of a declaration if there are other alternative remedies and those remedies have not been exhausted. In *Phileoallied Bank (Malaysia) Bhd v. Sakuntalathevy Manickavasagam* [2007] 1 CLJ 72, the court stated:

> In *Sungai Wangi Estate v. Uni* [1975] 1 LNS 172; [1975] 1 MLJ 136 Eusoffe Abdoolcader J (as he then was) said:
>
> Of all the Rules of the High Court 1957 (the predecessor of the Rules of the High Court 1980), concerning declaratory relief Order 25 rule 5 (now Order 15 rule 16 of the Rules of the High Court 1980) has the widest application as it provides that where a declaration is asked for, it may not be objected to on the ground that no consequential relief is or could be claimed. It does not prescribe any special procedure, or is it limited to any specific matter. It applies to all proceedings for a declaration – whether instituted by writ or originating summons, and whether brought under a particular statute or under the general declaratory jurisdiction of the court. Where no special procedure is laid down, the claim for a declaratory judgment is brought by way of a writ. In certain cases, however, specified by legislation, a declaration may be sought on originating summons. Proceedings in which the sole or principal question at issue is, or is likely to be, one of the construction of any written law or of any deed, will, contract, or other document, are appropriate to be taken by originating summons. This is specifically provided for by Order 54A of the Rules of the High Court. The court may also make declarations by way of originating summons in matters relating to express trusts or the administration of the estates of deceased persons under the provisions of Order 55 rule 3 of the Rules of the High Court.

(e) it is usual not to grant a declaration where there are alternative remedies available and adequate and had not been exhausted unless difficult and doubtful questions of law are involved. This principle is codified in the proviso to s. 41 of the Specific Relief Act. The proviso reads:

> Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration or title, omits to do so.

(f) that since this case primarily involves the question of the construction of the Act, the originating summons is the most appropriate procedure to adopt. It is evident that the plaintiff simply has no other alternative remedies under the circumstances but to seek a clarification on the point of law raised in this originating summons for a declaration on the question of whether the tribunal is vested with the jurisdiction to hear the defendant's case.

(g) it is established law that the essential ingredients that must exist before the relief of a declaration is granted are as follows: (a) there must exist a controversy between the parties; (b) the proceedings must involve a 'right'; (c) the proceedings must be brought by a person who has a proper or tangible interest in obtaining the order; (d) the controversy must be subject to the court's jurisdiction; (e) it must not be merely of academic interest, hypothetical or one whose resolution would be of no practical utility. In *Kho Poh Teck v. Digi Telecommunications Sdn Bhd* [2006] 2 CLJ 957, where the learned Judicial Comissioner, Tuan David Wong Dak Wah (as he then was), had succinctly addressed and summarised the principles of the declaratory judgment, where he held that:

> I shall now deal with issue 1. The power of the court to grant a declaration is provided for in O. 15 r. 16 of the Rules of the High Court 1980 ("RHC") and s. 41 of the Specific Relief Act which respectively provide as follows:
>
> No action or other proceeding shall be open to objection on the ground that a merely declaratory judgment or order is sought thereby, and the court may make binding declarations of right whether or not consequential relief is or could be claimed.
>
> Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to the character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in that suit ask for any further relief: Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration or title, omits to do so. In the case of *Karpal Singh v. Sultan of Selangor* [1987] 2 CLJ 342; [1987] CLJ (Rep) 686, Abdul Hamid Omar CJ set out the guidelines of the courts on declaratory relief:

The plaintiff has by his originating summons sought a declaration. It is fundamental principle that declaration will not be made if the application for it is embarrassing or the declarations can serve no useful purpose: (See *Mellstrom v. Garner & Ors.* [1970] 2 All ER 9) The learned Attorney-General has referred to a textbook on *Declaratory Orders*, 2nd Edn., by P.W. Young, on the conditions for declaratory orders and has submitted that one of the conditions to be satisfied is that (a) there must exist a controversy between the parties; (b) the proceedings must involve a 'right'; (c) the proceedings must be brought by a person who has a proper or tangible interest in obtaining the order; (d) the controversy must be subject to the Court's jurisdiction; and (e) it must not be merely of academic interest, hypothetical or one whose resolution would be of no practical utility.

The question must be a real and not a theoretical question; the person raising it must have a real interest to raise it; he must be able to secure a proper contradictor, that is to say, someone presently existing who has a true interest to oppose the declaration sought. (*The Russian Commercial & Industrial Bank v. British Bank for Foreign Trade* [1921] 2 AC 438 at 448 per Lord Dunedin).

At this juncture, I would refer to *Cox v. Green* [1966] 1 Ch 216 where it was held "that on its true construction, RSC, O. 15 r. 17 (O. 15 r. 16 of our RHC) was limited to an action or proceeding in which the grant of the declaration sought would not be contrary to the accepted principles on which the Court exercised its jurisdiction, one of those principles being that the Court would not make a declaration in a dispute which was not a justiciable dispute.

I would also refer to the case of *Lim Cho Hock v. Government of the State of Perak & Ors.* [1980] 2 MLJ 149 where the Court held that the Court's power to make declaratory judgments is confined to matters justiciable in the Courts, and the binding declarations which it could make under O. 15 r. 16 of the Rules of the High Court 1980 are limited to legal or equitable rights and do not extend to moral, social or political matters, (see also s. 41 Specific Relief Act 1950.)

Strictly it is a discretionary relief and the discretion is to be exercised judicially consistent with accepted principles. In the exercise of its discretion the Court shall have regard to the facts and circumstances of each particular case before it

decides to grant a declaration. "Further the court's power to grant a declaration is a discretionary one without limits. In the case of *Tengku Mariam Binte Tengku Sri Wa Raja & Anor v. Commissioner For Religious Affairs, Terengganu & Ors* [1968] 1 LNS 156; [1969] 1 MLJ 110 at 112, Wan Suleiman J adopted the dicta in *Barnard v. National Dock Labour Board* [1953] 2QB 18, 41 wherein it was stated:

I know of no limits to the power of the court to grant a declaration except such limits as it may in its discretion impose upon itself.

(h) the TCC is a creature of statute, namely the Act, and was established under s. 85 of the Act with a view to offer the public the service of a cheaper and speedier forum to hear claims relating to consumer claims. Being a statutory forum, the powers afforded to the TCC are therefore confined within the four corners of the Act. The jurisdiction of the TCC is subject to certain limitations prescribed under the Act. Section 3 of the CPA 1999 defines "goods" as goods which are primarily purchased, used or consumed for personal, domestic or household purposes, and includes: (a) goods attached to, or incorporated in, any real or personal property; (b) animals, including fish; (c) vessels and vehicles; (d) utilities; and (e) trees, plants and crops whether on, under or attached to land or not, but does not include choses in action, including negotiable instruments, shares, debentures and money.

(i) the defendant's claim is premised on the subject matter of "land and building", otherwise known as real property, or realty, that being one unit of single storey intermediate terrace house. The question to be adjudicated before the court now is whether a "house" amounts to "goods" as defined in the Act, in particular s. 3. If it does not, then the TCC would prospectively be acting *ultra vires* should it proceed to hear the defendant's case for reason of want of jurisdiction. This exercise will call upon definitions of the words "goods", "personal property", "real property", "land" etc. and also the canons of construction of the Act.

(j) in applying the canon of construction, namely *"noscitur a sociis"* it is evident that the general tenor of the surrounding words and meaning thereof, of the word "goods" as defined in s. 3 of the Act, is that of "personal chattels" which are consumed

in general households eg, televisions, cars, telephones – the "house" itself cannot be regarded as one of those "goods" for consumption in the "consumer" sense.

(k) the defendant in pursuing his claim in the TCC is basing his claim pursuant to cls. 17 and 21 of the sale and purchase that being his right to claim for liquidated agreed damages for allegations of late completion and delivery of the "house" and his right to invoke the defect liability clause. It is the plaintiffs case that these contractual rights of the defendant are in law, "chose in action", as opposed to "chose in possession". Section 99 of the Act sets out the limitations of the tribunal's jurisdiction, wherein it provides:

> Except as expressly provided under this Act, the Tribunal shall have no jurisdiction in respect of any claim:
>
> (c) in which there is a dispute concerning:
>
> (iii) any chose in action;

(l) It is evident from ss. 3 and 99 of the Act that the TCC has no jurisdiction to hear cases in respect of any dispute involving a "chose in action".

(m) the phrase "chose in action" has been judicially considered in some case authorities. In the case of *Re: Khoo Kim Hock* [1974] 2 MLJ 29, it was held that:

> The expression "chose in action" or "things in action "in the literal sense has been described to mean a thing recoverable by action as contrasted with a chose in possession, namely, a thing of which a person has not only ownership but also actual physical possession. The meaning of the expression has varied from time to time, but it is now used to describe all personal rights of property which can only be claimed or enforced by action, and not by taking physical possession. It is used in respect of both corporeal and incorporeal personal property which is not in possession.

(n) furthermore, in the case of *United Overseas Bank Limited v. Ting Kai Hoon* [1998] 1 LNS 38, it was held that:

> ... chose in action means recovering a thing which a person may not have actual physical possession of (*Halsbury's Laws*, 4th edn, para 1).

(o) that the defendant's rights based on the sale and purchase agreement, in particular cls. 17 and 21 in this instance (being the clauses she has relied on based on her statement of claim before the TCC), are "chose in action". These rights confer the defendant with the right to bring an action to recover compensation for damages. They are things of which the defendant can only claim or enforce by action eg, rights of proceeding in a court of law to procure damages for compensation – a legal chose of action is a right of action which could only be enforced in a court of law. These are also known as incorporeal property. Being an action premised on "chose in action", by virtue of the exclusionary limb of s. 3's definition of "goods" and also s. 99 of the Act, the TCC lacks the jurisdiction to hear the defendant's case. For example, the jurisdiction of the TCC was challenged in the case of *Telekom Malaysia Bhd v. Tribunal Tuntutan Pengguna & Anor* [2007] 1 CLJ 300 on the issue whether the disputed transactions (telephone bills) amounted to "any trade transactions effected by electronic means". In that case, it was held by the High Court in Melaka that the Tribunal lacked the jurisdiction to hear the case since the disputed transactions are caught within the ambit of the first limb of s. 2(2)(g) of the Act.

(p) in comparison, in Peninsular Malaysia, the Tribunal for Homebuyer Claims (hereinafter referred to as "THC") was established under s. 16B of the Housing Developers (Control and Licensing) (Amendment) Act 1966 which came into operation on 1 December 2002. The THC (governed by Housing Development (Tribunal for Homebuyer Claims Regulations 2002 is empowered to hear claims from the homebuyers against licensed developers. The THC is now only available in Peninsular Malaysia and there is no such Tribunal in Sarawak to hear the claims from the homebuyers against the licensed developers. Prior to the establishment of the THC in Peninsular Malaysia, the homebuyers' claims against the licensed developers could only be filed in the civil court. On the other hand, the TCC established under s. 85 of the Act and enacted by Parliament to be applied to all states of Malaysia which came into operation on 15 November 1999. If the TCC also has jurisdiction to hear claims from the

homebuyers against the licensed developers, it would be an act of redundancy to establish the THC. Parliament never intended TCC to have jurisdiction to hear the claim arising from the sale and purchase agreement entered into between the homebuyer and the licensed developer, otherwise there would have been no necessity of the establishment of the THC. In addition none of the provisions in the Act provide the jurisdiction of the TCC to hear the dispute arising from the sale and purchase agreement entered into between the homebuyer and the licensed developer. Since the Act does not provide jurisdiction to TCC to hear the claims from the homebuyers against the licensed developers, the TCC should not act *ultra vires* and outside its jurisdiction in order to defeat the intention of Parliament.

(q) In the case of *Tribunal Tuntutan Pembeli Rumah v. Westcourt Corporation Sdn Bhd & Other Appeals* [2004] 2 CLJ 617, it was held that:

> To do so would be contrary to a settled principle of law that statutes must be read as a whole. (See: *Kesultanan Pahang v. Sathask Realty Sdn Bhd* [1998] 2 CLJ 559). And literal interpretation of a statute is not applicable in all cases. There are circumstances where the nature and purpose of a particular legislation must be considered when construing its various provisions so as not to defeat the intention of Parliament. (See: *Akberdin Hj Abdul Kader & Anor v. Majlis Peguam Malaysia* [2002] 4 CLJ 689; *SEA Housing Corporation Sdn Bhd v. Lee Poh Choo* [1982] CLJ 355; [1982] CLJ (Rep) 305).

(r) It is to be noted in the foregoing case that the homebuyers had resorted to the THC, not the TCC, to seek redress. The foregoing case was further affirmed in *Palmerston Holdings Sdn Bhd v. Chong Siew Eng* [2007] 7 CLJ 56, where the court held that:

(a) In *Tribunal Tuntutan Pembeli Rumah v. Westcourt Corporation Sdn Bhd & Other Appeals* [2004] 2 CLJ 617, the Court of Appeal through the judgment of Richard Malanjum JCA (now CJ (SS)) had the occasion to consider the housing legislation and enunciated the following principles:

(i) it is a settled principle of law that statutes must be read as a whole, at p. 624E (see: *Kesultanan Pahang v. Sathask Realty Sdn Bhd* [1998] 2 CLJ 559);

(ii) there are circumstances where the nature and purpose of a particular legislation must be considered when construing its various provisions so as not to defeat the intention of Parliament, at p. 624g-h (see *Akberdin Hj Abdul Kader & Anor v. Majlis Peguam Malaysia* [2002] 4 CLJ 689; *S.E.A. Housing Corporation Sdn. Bhd., supra*); and

(iii) the housing legislation is a piece of social legislation and hence its provisions should be given liberal and purposive interpretation ie, to promote the general legislative purpose underlying the provisions. (See also s. 17A of the Interpretation Acts 1948 and 1967).

(b) on further appeal, *Westcourt Corporation Sdn Bhd lwn. Tribunal Tuntutan Pembeli Rumah* [2004] 4 CLJ 203, the Federal Court through the judgment of Ahmad Fairuz CJ Malaysia approved the Court of Appeal's enunciation of the above principles governing the interpretation of the housing legislation. (*Tan Tian Seng & Anor v. Grobina Resorts Sdn Bhd* [2005] 7 CLJ 70).

[5] On the date of hearing of the application I had cautioned the plaintiff that the necessary and interested parties are not named for me to deal with the matter. In this case I take the view that the TCC must be made a party and/or be represented in these proceedings. Any decision given without the hearing of the tribunal will be in breach of the rules of natural justice. The plaintiff insisted and assured me that he had the locus and can proceed to seek the declaratory relief sought. After having read the submission in detail I am of the view that the plaintiff has not made out a case to proceed without naming the TCC. Further, declaratory relief are discretionary relief and not one which can be sought as of right. *Sine qua non* for considering declaratory relief is in my view needs the presence of all interested and necessary parties as set out in O. 15 r. 16 RHC 1980 as the court deems fit.

[6] The plaintiffs reliance on the views of P. W. Young in his book on *"Declaratory Order"* is not sufficient to satisfy the threshold requirement before the court can exercise to grant the declaratory relief. The very important principle in my judgment which must be adhered to before declaratory relief can be considered is for the

plaintiff to ensure that all necessary and interested parties are before court and only thereafter can the views of P. W. Young become relevant. The matter does not end there. The plaintiff must also satisfy the requirement set out in the Specific Relief Act 1950 (SRA 1950) because the Act specially deals with declaratory orders and decrees. Section 41 of SRA 1950 read as follows:

> Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to the character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in that suit ask for any further relief:
>
> Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration or title, omits to do so.

Section 41 of the said Act must be read with O. 15 r. 16 of RHC 1980 which states:

> No action or other proceeding shall be open to objection on the ground that a merely declaratory judgment or order is sought thereby, and the Court may make binding declarations of right whether or not consequential relief is or could be claimed.

This section and O. 15 r. 16 of RHC 1980 is patently in conflict. Similar provision as this section and the said order is found in India. In construing the provisions, the Privy Council in *Kathamar Nachiyar v. Dorasingha* [1875] 21A 169 has held that the courts in India had no power to make a merely declaratory decree otherwise than under the section.

Under this section, there is a need to seek **"further relief than mere declaration"**, (emphasies added). This is not a requirement under O. 15 r. 16. Declaratory orders cannot be granted when the strict requirement set out in this section is not satisfied. Our courts have endorsed the criteria set out by P.W. Young in his book *"Declaratory Orders"* 2nd edn where he says that the criteria required before there can be a declaratory order are as follows: (a) there must exist a controversy between the parties, (b) the proceedings must involve a "right" (c) the proceedings must be brought by a person who has a proper or tangible interest in obtaining the order, which usually referred to as "standing" or

"locus standi". (d) the controversy must be subject to the court's jurisdiction, (e) the defendant must be a person having a proper or tangible interest in opposing the plaintiffs claims, (f) the issue must be ripe, ie, it must not be of academic interest hypothetical or one whose resolution would be of no practical utility.

In the light of s. 41 of the Act, the proposition stated by the learned author P.W. Young cannot be read in isolation. Further, it will appear that the literal reading of O. 15 r. 16 of RHC 1980 will be *ultra vires* s. 41 of SRA 1950.

[7] In my view, pure reliance on English authorities and books now (after 50 years of independence) in almost all cases will not reflect our legislative intention and scope of the relevant Acts. In my view less dependence will pave way for independence in the development of law and legal jurisprudence. This is so because many of our legislative provisions are not applicable in England or other jurisdiction in the commonwealth. It is often unnecessary to rely on authorities when the Act and Rules are extremely clear. The plaintiff need only comply with the basic rules and statutory provisions to obtain the relevant relief. It is unnecessary as in this case to place heavy reliance on cases when the Act and Rules for declaratory relief are clear and self explanatory, and the discretion to grant the relief is vested in the courts.

[8] For reasons stated above, notwithstanding there are some merits in the plaintiffs submission I take the view that the plaintiff has not satisfied the legal and procedural requirements and has taken much of courts time and on the facts of this case it can be said that the plaintiff's application is frivolous, vexatious and abuse of process of court. To avert such application, I take the view that the solicitors must be asked to bear the costs as in doing so it will stand as a deterrent for filing unmeritorious application and this will also be a step to reduce backlog of cases. It is my judgment that the plaintiffs originating summons must be dismissed with costs to be taxed and paid to the defendant. As the defendant is not before the court but has been served the learned deputy registrar shall send a copy of this judgment to the defendant and inform her that she is entitled to tax the costs. I hereby order so.